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and directed to pay, out of sums appropriated to the payment of claims, the sum of \$67,000 to the Jewish Employment Vocational Service, 1727 Locust Street, Saint Louis, Missouri, a nonprofit charity that operates the Jewish Employment Vocational Service Workshop, a workshop for the training and rehabilitation of blind and other severely handicapped workers, which produces certain commodities purchased by the United States in accordance with the Act entitled "An Act to create a Committee on Purchases of Blind-Made Products, and for other purposes" (52 Stat. 1186).

(b) Payment under this section shall be in full satisfaction of all claims by such Jewish Employment Vocational Service against the United States for certain anti-fainting capsules (ammonia inhalant ampules) manufactured by such workshop, that were seized, condemned, and destroyed pursuant to orders on December 29, and 30, 1977, by the United States District Court for the Eastern District of Missouri.

Sec. 2. Notwithstanding any contract to the contrary, no amount of the sum appropriated in the first section of this Act shall be paid or delivered to or received by an agent or attorney on account of services rendered in connection with this claim. Any person who violates the provisions of this section is guilty of a misdemeanor punishable by a fine in an amount not to exceed \$1,000.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 96-817), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

The purpose of the bill is to authorize payment of \$67,000 to the Jewish Employment Vocational Service ("JEVS") of St. Louis, Mo., a nonprofit, charitable organization, in full satisfaction of its claims against the United States in connection with the destruction of ammonia inhalant capsules produced by JEVS.

REAPPOINTMENT OF MURRAY GELL-MANN AS A CITIZEN REGENT, BOARD OF REGENTS, SMITHSONIAN INSTITUTION

The joint resolution (S.J. Res. 181) to provide for the reappointment of Murray Gell-Mann as a citizen regent of the Board of Regents of the Smithsonian Institution, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Murray Gell-Mann of California on August 30, 1980, be filled by the reappointment of the present incumbent for the statutory term of six years.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 96-820), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

Senate Joint Resolution 181 would provide that the vacancy in the Board of Regents of the Smithsonian Institution, of the class other than Members of Congress, which will occur by the expiration of the term of Murray Gell-Mann of California on August 30, 1980, be filled by the reappointment of the present incumbent for the statutory term of six years.

PRINTING OF "HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM" AS A SENATE DOCUMENT

The resolution (S. Res. 443) authorizing the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program" as a Senate document was considered, and agreed to, as follows:

Resolved, That the annual report of the Secretary of Transportation to the Congress of the United States (in compliance with section 144 of title 23, United States Code), entitled "Highway Bridge Replacement and Rehabilitation Program", be printed as a Senate document.

Sec. 2. There shall be printed five hundred additional copies of such document for the use of the Committee on Environment and Public Works.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 96-821), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

Senate Resolution 443 would provide (1) that the annual report of the Secretary of Transportation to the Congress of the United States (in compliance with section 144 of title 23, United States Code), entitled "Highway Bridge Replacement and Rehabilitation Program", be printed as a Senate document; and (2) that there be printed 500 additional copies of such document for the use of the Committee on Environment and Public Works.

The printing-cost estimate, supplied by the Acting Public Printer, is as follows:

Printing-cost estimate	
To print as a document (1,500 copies)	\$5,432.90
500 additional copies, at \$1,333.33 per thousand	666.66
Total estimated cost, Senate Resolution 443	6,099.56

PRINTING OF BOTANIC GARDEN CONSERVATORY BROCHURE

The concurrent resolution (S. Con. Res. 102) authorizing the printing of a self-guided tour brochure of the U.S. Botanic Garden Conservatory, was considered, and agreed to, as follows:

Resolved by the Senate (the House of Representatives concurring), That there shall be printed for the use of the Joint Committee of Congress on the Library one hundred thousand copies of the brochure entitled "United States Botanic Garden Conservatory—A Self-Guided Tour".

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 96-822), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

Senate Concurrent Resolution 102 would authorize the printing for the use of the Joint Committee of Congress on the Library of 100,000 copies of the brochure entitled "United States Botanic Garden Conservatory—A Self-Guided Tour".

As the number of visitors to the Botanic Garden Conservatory has increased—from 273,940 in fiscal year 1971 to 1,745,023 in fiscal year 1979—it has become apparent that there is a growing need for printed descriptions of the collection to augment the efforts of the staff to answer visitor questions as they tour the collections.

The printing-cost estimate, supplied by the Acting Public Printer, is as follows:

Printing-cost estimate	
First 50,000 copies	\$4,033.40
50,000 additional copies, at \$51.82 per thousand	2,591.00

Total estimated cost, S. Con. Res. 102	6,624.40
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CLASSIFIED INFORMATION PROCEDURES ACT

The Senate proceeded to consider the bill (S. 1482) to provide certain pretrial, trial, and appellate procedures for criminal cases involving classified information, which had been reported from the Committee on the Judiciary with amendments as follows:

On page 3, line 1, strike "of any classified material disclosed to the defendant" and insert "in connection with a prosecution by the United States of any classified material";

On page 4, line 10, after "Act" insert a comma and "and until the time for the Government to appeal such determination under section 7 has expired or any appeal under section 7 by the Government is decided";

On page 5, line 19, after "category" insert "approved by the Court";

On page 6, beginning with line 24, strike through and including page 6, line 5;

On page 6, line 6, strike "(3)" and insert "(2)";

On page 6, line 14, strike "(4)(A)" and insert "(3)(A)";

On page 8, line 21, after "information" beginning with the comma, strike through and including "delay" in line 24;

On page 11, beginning with line 3, strike through and including page 12, line 23;

On page 13, line 3, strike "11" and insert "10";

On page 13, beginning with line 10, insert the following:

Sec. 11. Sections 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

On page 14, line 13, after "Attorney General" insert "or his designee";

On page 14, line 14, strike "make available" and insert "report orally or in writing semiannually";

On page 14, beginning with line 18, strike through and including line 19, and insert "on all cases where a decision not to prosecute a violation of Federal law pursuant to subsection (a) has been made";

On page 14, beginning with line 22, insert the following:

REPORTS TO CONGRESS

Sec. 13. The Attorney General shall deliver to appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act

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may be cited as the "Classified Information Procedures Act".

DEFINITIONS

SECTION 1. (a) "Classified information", as used in this Act, means any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in section 2014(y) of title 42, United States Code.

(b) "National security", as used in this Act, means the national defense and foreign relations of the United States.

PRETRIAL CONFERENCE

SEC. 2. At any time after the filing of the indictment or information, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution. Following such motion, or on its own motion, the court shall promptly hold a pretrial conference to establish the timing of requests for discovery, the provision of notice required by section 5 of this Act, and the initiation of the procedure established by section 6 of this Act. In addition, at the pretrial conference the court may consider any other matters which relate to classified information or which may promote a fair and expeditious trial.

PROTECTIVE ORDERS

SEC. 3. Upon request of the Government, the court shall issue a protective order to guard against the compromise in connection with a prosecution by the United States of any classified material.

DISCLOSURE OF CLASSIFIED INFORMATION TO DEFENDANTS

SEC. 4. The court may authorize the Government to delete specified items of classified information from documents to be made available to the defendant, to substitute a summary of the information for such classified documents, or to substitute a statement admitting relevant facts that the classified information would tend to prove. The Government's motion requesting such authorization and materials submitted in support thereof shall, upon request of the Government, be considered by the court in camera and not disclosed to the defendant.

NOTICE OF DEFENDANT'S INTENTION TO DISCLOSE CLASSIFIED INFORMATION

SEC. 5. (a) Notice by Defendant.—If a defendant reasonably expects to disclose or to cause the disclosure of classified information in any manner in connection with any trial or pretrial proceeding involving the criminal prosecution of such defendant, the defendant shall, within the time specified by the court or where no time is specified within thirty days prior to trial, notify the attorney for the Government and the court in writing. Whenever a defendant learns of additional classified information he reasonably expects to disclose at any such proceeding, he shall notify the attorney for the Government and the court in writing as soon as possible thereafter. Such notice shall include a brief description of the classified information. No defendant shall disclose any information known or believed to be classified in connection with a trial or pretrial proceeding until notice has been given under this subsection and until the Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in section 6 of this Act, and until the time for the Government to appeal such determination under section 7 has expired or any appeal under section 7 by the Government is decided.

(b) **FAILURE TO COMPLY.**—If the defendant fails to comply with the requirements of subsection (a) the court may preclude disclosure of any classified information not

made the subject of notification and may prohibit the examination by the defendant of any witness with respect to any such information.

PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION

SEC. 6. (a) MOTION FOR HEARING.—After the United States receives notification pursuant to section 5 or otherwise learns of any classified information that the defendant may disclose or cause to be disclosed at a trial or pretrial proceeding, the Government may, within the time specified by the court, move for a hearing concerning any such information. In connection with its motion, the Government may submit the classified information along with an explanation of the basis for the classification to the court for its examination in camera and shall provide the court with an affidavit of the Attorney General, the Deputy Attorney General, or a designated Assistant Attorney General certifying that the information is classified. The hearing, or specified portion thereof, shall be held in camera whenever the Government certifies that a public proceeding may result in the compromise of classified information.

(b) **HEARING.**—(1) Prior to the hearing, the Government shall provide the defendant with the notice of the information that will be at issue. This notice shall identify the specific classified information that will be at issue whenever that information has previously been made available to the defendant in connection with the pretrial proceedings. The Government may describe the information by generic category approved by the Court rather than identifying the specific information of concern to the Government when the Government has not previously made the information available to the defendant in connection with the pretrial proceedings.

(2) Following a hearing, the court shall determine whether and the manner in which the information at issue may be used in a trial or pretrial proceeding. As to each item of classified information, the court shall set forth in writing the basis for its determination. Where the Government's motion under subsection (a) is filed prior to the trial or pretrial proceeding, the court shall rule prior to the commencement of the relevant proceeding.

(3) (A) If the court determines that the information may not be disclosed or elicited at a pretrial or trial proceeding the record of the hearing shall be sealed and preserved by the Government in the event of an appeal. The defendant may seek reconsideration of the court's determination prior to or during trial.

(B) In lieu of authorizing disclosure of the specific classified information, the court shall, if it finds that the defendant's right to a fair trial will not be prejudiced, order—

(i) substitution of a statement admitting relevant facts that the specific classified information would tend to prove, or

(ii) substitution of a summary or portion of a specific classified information.

(C) If the court determines that these alternatives to full disclosure may not be used and the Government provides the court with an affidavit of the Attorney General, Deputy Attorney General, or designated Assistant Attorney General objecting to disclosure of the information, the court shall issue any order which is required in the interest of justice. Such an order may include, but need not be limited to an order—

(i) striking or precluding all or part of the testimony of a witness; or

(ii) declaring a mistrial; or

(iii) finding against the Government on any issue as to which the evidence relates; or

(iv) dismissing the action, with or without prejudice; or

(v) dismissing specified counts of the indictment against the defendant.

Any such order shall permit the Government to avoid the sanction for nondisclosure by agreeing to permit the defendant to disclose the information at the pertinent trial or pretrial proceeding. The Government may exercise its right to take an interlocutory appeal prior to determining whether to permit disclosure of any classified information.

(c) **RECIPROCITY.**—Whenever the court determines pursuant to subsection (b) that classified information may be disclosed in connection with a trial or pretrial proceeding, the court shall, unless the interest of fairness does not so require, order the Government to provide the defendant with the information it expects to use to rebut the classified information. The court may place the Government under a continuing duty to disclose such rebuttal information. If the Government fails to comply with its obligation under this subsection, the court may exclude any evidence not made the subject of a required disclosure and may prohibit the examination by the Government of any witness with respect to such information.

INTERLOCUTORY APPEAL

SEC. 7. (a) An interlocutory appeal by the United States taken before or after the defendant has been placed in jeopardy shall lie to a court of appeals from a decision or order of a district court in a criminal case requiring the disclosure of classified information, imposing sanctions for nondisclosure of classified information, or refusing a protective order sought by the United States to prevent the disclosure of classified information.

(b) An appeal taken pursuant to this section either before or during trial shall be expedited by the court of appeals. Prior to trial, an appeal shall be taken within ten days after the decision or order appealed from and the trial shall not commence until the appeal is resolved. If an appeal is taken during trial, the trial court shall adjourn the trial until the appeal is resolved and the court of appeals (i) shall hear argument on such appeal within four days of the adjournment of the trial, (ii) may dispense with written briefs other than the supporting materials previously submitted to the trial court, (iii) shall render its decision within four days of argument on appeal, and (iv) may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

INTRODUCTION OF CLASSIFIED INFORMATION

SEC. 8. (a) CLASSIFICATION STATUS.—Writings, recordings, and photographs containing classified information may be admitted into evidence without change in their classification status.

(b) **PRECAUTIONS BY COURT.**—The court, in order to prevent unnecessary disclosure of classified information involved in any criminal proceeding, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein.

(c) **TAKING OF TESTIMONY.**—During the examination of a witness in any criminal proceeding, the Government may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible. Following such an objection, the court shall take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring the Government to provide the court with a proffer of the witness' re-

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sponse to the question or line of inquiry and requiring the defendant to provide the court with a proffer of the nature of the information he seeks to elicit.

SECURITY PROCEDURES TO SAFEGUARD AGAINST COMPROMISE OF CLASSIFIED INFORMATION DISCLOSED TO THE COURT

SEC. 9. (a) Within one hundred and twenty days following the date of enactment of this Act, the Chief Justice of the United States, in consultation with the Attorney General, the Director of Central Intelligence, and the Secretary of Defense, shall prescribe security procedures for protection against the compromise of classified information submitted to the Federal district courts, the courts of appeals, and the Supreme Court.

(b) Until such time as procedures are promulgated pursuant to subsection (a), the Federal courts shall in each case involving classified information adopt procedures to protect against the compromise of such information.

IDENTIFICATION OF INFORMATION RELATED TO THE NATIONAL DEFENSE

SEC. 10. In any prosecution in which the Government must establish that material relates to the national defense or constitutes classified information, the Government shall notify the defendant, within the time specified by the court, of the portions of the material that it reasonably expects to rely upon to establish the national defense or classified information element of the offense.

SEC. 11. Sections 1 through 10 of this Act may be amended as provided in section 2076, title 28, United States Code.

ATTORNEY GENERAL GUIDELINES

SEC. 12. (a) Within one hundred and eighty days of enactment of this law, the Attorney General shall issue guidelines specifying the factors to be used by the Department of Justice in rendering a decision whether to prosecute a violation of Federal law in which, in the judgment of the Attorney General, there is a possibility that classified information will be revealed. Such guidelines shall be transmitted to the appropriate committees of Congress.

(b) When the Department of Justice decides not to prosecute a violation of Federal law pursuant to subsection (a), an appropriate official of the Department of Justice shall prepare written findings detailing the reasons for the decision not to prosecute. The findings shall include—

(1) the intelligence information which the Department of Justice officials believe might be disclosed,

(2) the purpose for which the information might be disclosed,

(3) the probability that the information would be disclosed, and

(4) the possible consequences such disclosure would have on the national security.

(c) Consistent with applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches, the Attorney General or his designee shall report orally or in writing semiannually to the Permanent Select Committee on Intelligence of the United States House of Representatives and the Select Committee on Intelligence of the United States Senate on all cases where a decision not to prosecute a violation of Federal law pursuant to subsection (a) has been made.

REPORTS TO CONGRESS

SEC. 13. The Attorney General shall deliver to appropriate committees of Congress a report concerning the operation and effectiveness of this Act and including suggested amendments to this Act. For the first three years this Act is in effect, there shall be a report each year. After three years, such reports shall be delivered as necessary.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. ROBERT C. BYRD, Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 96-823), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

PURPOSE

The purpose of this bill is to help ensure that the intelligence agencies are subject to the rule of law and to help strengthen the enforcement of laws designed to protect both national security and civil liberties. Too often the duty of the government to protect legitimate national security secrets and to prosecute law breakers have been in conflict. Insofar as possible, S. 1482 resolves that conflict. Assistant Attorney General Philip Heymann summarized the difficulty that the Executive branch has faced in cases involving national security information:

The government's understandable reluctance to compromise national security information invites defendants and their counsel to press for the release of sensitive classified information the threatened disclosure of which might force the government to drop the prosecution. "Graymail" is the label that has been applied to describe this tactic. It would be a mistake, however, to view the "graymail" problem as limited to instances of unscrupulous or questionable conduct by defendants since wholly proper defense attempts to obtain or disclose classified information may present the government with the same "disclose or dismiss" dilemma.

To fully understand the problem it is necessary to examine the decision-making process in criminal cases involving classified information. Under present procedures, decisions regarding the relevance and admissibility of evidence are normally made as they arise during the course of the trial. In advance of trial, the government often must guess whether the defendant will seek to disclose certain classified information and speculate whether it will be found admissible if objected to at trial. In addition, there is a question whether material will be disclosed at trial and the damage inflicted, before a ruling on the use of the information can be obtained. The situation is further complicated in cases where the government expects to disclose some classified items in presenting its case. Without a procedure for pretrial rulings on the disclosure of classified information, the deck is stacked against proceeding with cases because all of the sensitive items that might be disclosed at trial must be weighed in assessing whether the prosecution is sufficiently important to incur the national security risks.

In the past, the government has foregone prosecution of conduct it believed to violate criminal laws in order to avoid compromising national security information. The costs of such decisions go beyond the failure to redress particular instances of illegal conduct. Such determinations foster the perception that government officials and private persons with access to military or technological secrets have a broad *de facto* immunity from prosecution for a variety of crimes. This perception not only undermines the public's confidence in the fair administration of criminal justice but it also promotes concern that there is no effective check against improper conduct by members of our intelligence agencies.

While only a very small percentage of criminal cases present classified information

questions, these cases often involve important matters of considerable public interest. Moreover, we are increasingly confronting classified information issues in a wide range of cases including espionage, perjury, burglary, and civil rights violations, among others. The new Foreign Corrupt Practices Act provisions and the possible enactment of a charter for intelligence activities can be expected to expand the number of cases presenting classified information problems.

This bill attempts to deal with the "graymail" problem by requiring a defendant who reasonably expects to disclose or to cause a disclosure of classified information in connection with any trial or pre-trial proceeding to notify the Government prior to trial, when possible. The Government can then move for a hearing to determine whether the information can indeed be disclosed by the defendant in the course of a trial. Following such a hearing, which would ordinarily be before trial, the court determines whether and the manner in which the information at issue may be used in a trial or pre-trial proceeding. If the defendant's right to a fair trial will not be prejudiced, the court may allow the Government to substitute a statement admitting relevant facts that the specific classified information would tend to prove or to substitute a summary of the specific classified information. If the Government objects to an order requiring disclosure, the court may impose a sliding scale of sanctions against the Government, including finding against the Government on issues related to undisclosed evidence or dismissing the action. The Government is authorized to take interlocutory appeals, thus remedying the present situation in which the Government, even when faced with a district court ruling it believes to be wrong, must either compromise the national security information by permitting its disclosure at trial or withhold the information and jeopardize the prosecution.

Other important provisions of the bill include a requirement that when the defendant is required in the context of the pretrial hearing to disclose information to the Government prior to trial, the Government is under a reciprocal obligation to provide the defendant with information as specified by the legislation. In addition, the Attorney General must issue guidelines specifying factors to be used by the Department of Justice in rendering a decision on whether to prosecute a violation of Federal law where there is a possibility that classified information may be revealed. As a result of the guidelines, objective standards can be set rather than relying on ad hoc decisions in each case. In addition, the Attorney General must report semi-annually to the two Intelligence Committees of Congress on all cases where a decision not to prosecute a violation of Federal law has been made. This will permit congressional oversight of "graymail" cases that occur in the future.

HOWARD B. SCHMUTZ

The bill (S. 1192) for the relief of Howard B. Schmutz, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is authorized and directed to pay, out of money in the Treasury not otherwise appropriated, the sum of \$129,000 to Howard B. Schmutz, of Salt Lake City, Utah, that amount representing the